

## **GLOBAL ISSUES COMMITTEE REPORT**

### **November 11, 2010**

#### **Goal of Committee:**

To articulate recommendations and items for consideration by the full Commission relating to “global issues” that impact all or a significant portion of Missouri’s tax credit programs.

#### **Approach to Committee Work:**

An analysis of the existing global issues list (October 12<sup>th</sup> Stogel/Gross memorandum to the Commission) reveals that each of the listed global issues fits into one of four main categories:

- Budgetary Savings and Certainty
- Public and Private Benefits
- Accountability
- Administrative Efficiencies

Those four categories are consistent with the Governor’s charge to the Committee:

- “During his remarks to the Missouri Tax Credit Review Commission (the “Commission”) on September 8, 2010, Governor Nixon observed that ‘we’re looking at a budget gap in Fiscal Year 2012 that could exceed \$400,000,000 at the state level.’<sup>[1]</sup> The Governor also observed that tax credit spending has increased as a percentage of state revenues while spending for other programs has been reduced.<sup>[2]</sup> He continued by expressing concern over the growth of 61 tax credit programs and the effect such growth has had on other state priorities.
- The Governor’s comments provided clear guidance as to the primary responsibility of the Commission and its subcommittees. The Governor asked us to (1) determine which tax programs were generating a good return on investment for the taxpayers of Missouri; (2) which programs were not generating a good return; and (3) to provide fact-based recommendations for change.<sup>[3]</sup> Elaborating further, the Governor stated that we should strive to take the economic development tools we have and make them more efficient.<sup>[4]</sup> He noted: ‘Tax credits work best when they deliver on what they were intended for. Putting people to work, boosting development, building strong communities.’<sup>[5]</sup>”

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<sup>[1]</sup> Tr. Page 4, Tax Credit Review Commission Meeting of September 8, 2010.

<sup>[2]</sup> Tr. Page 5, Tax Credit Review Commission Meeting of September 8, 2010.

<sup>[3]</sup> Tr. Page 3, Tax Credit Review Commission Meeting of September 8, 2010.

<sup>[4]</sup> Tr. Page 9, Tax Credit Review Commission Meeting of September 8, 2010.

<sup>[5]</sup> Tr. Page 18, Tax Credit Review Commission Meeting of September 8, 2010.

## **Meetings:**

The Committee met twice for discussion (November 9<sup>th</sup>, 2:00 PM to 5:00 PM and November 10<sup>th</sup>, 2:00 PM to 5:00 PM). Each meeting was posted and conducted in accordance with the Sunshine Law.

## **RECOMMENDATIONS:**

### **BUDGET CERTAINTY**

#### **1. Limitations on Total Amount of Tax Credits to Address Budget Challenges and Protect AAA Bond Rating**

- Should there be a mechanism to prospectively limit the amount the total amount of credits approved or issued?
- Should there be a global cap on all programs tied to a percentage of net general revenue collections?
- Should all programs not currently capped be subject to a statutory cap?
- Should some or all existing statutory caps be reduced?
- Should program caps be tied to amounts actually utilized in prior years?
- Are there other considerations with respect to imposing limitations on the total amount of credits in order to address budget shortfalls?

***Recommendation #1:** The committee recommends that a statutory cap be imposed on the total amount of each tax credit program that may be authorized annually in order to gain additional budget certainty for the State.*

***Recommendation #2:** The committee recommends that there be enacted a global cap on the total amount of tax credits that may be authorized annually equal to the sum of the individual program caps and that the global cap provide for some flexibility, in a manner determined by statute, to allow agencies to shift cap from one program to another to account for increases or decreases in demand in particular programs.*

#### **2. Subjecting Some or All Programs to an Annual Appropriations Process**

- Are there any other considerations with respect to subjecting some or all programs to an annual appropriations process?

***Recommendation #3:** After extensive debate on the issue, which included a discussion of the need for the General Assembly to have a mechanism for prioritizing tax credits among other expenditures of tax dollars and the possibility of a mechanism to allow for multi-year appropriations for tax credit programs, the committee was unable to reach consensus with respect to whether some or all tax credit programs should be subject to*

*an annual appropriations process. However, in recognition of the significance of the argument that some or all tax credits should be subject to the appropriations process, the committee recommends that the full Commission set aside a specific period of time during its remaining meetings to debate and vote on a recommendation with respect to this issue.*

### **3. Sunset Provisions Unless Affirmatively Reauthorized by the General Assembly**

- Should all or some programs currently without sunsets be subject to sunsets with clear transition rules to protect investments?
- Are there other considerations in determining whether sunsets are appropriate for some or all programs?

***Recommendation #4:*** *The committee recommends that the Commission address individually each of the tax credit programs that currently lack a sunset provision to determine whether a 2 year, 4 year, or 6 year sunset period should be imposed, with due consideration for whether there are compelling reasons for leaving a program without a sunset (e.g. the program represents an adjustment in the overall tax structure, etc.).*

### **4. Moratorium on New Tax Credit Programs**

- Should there be a limitation on the General Assembly's ability to enact new tax credit programs at all or absent a corresponding revenue offset?
- Are there any other considerations with respect to imposing a moratorium on any new tax credit programs?

***Recommendation #5:*** *The committee recommends that there be no limitation imposed on the General Assembly's ability to enact new tax credit programs.*

### **5. Program Elimination/Consolidation/Reduction**

- Are there programs that could be eliminated, consolidated or reduced to achieve a short or long-term budget savings?
- Are there any other considerations with respect to program elimination, consolidation or reduction?

*The committee recognizes the work of other committees who have recommended to the full Commission that a number of programs be eliminated, consolidated, or reduced to achieve short or long-term budget savings.*

***Recommendation #6:*** *The committee recommends that the following programs that have outlived their usefulness be terminated, and that the General Assembly and Revisor of Statutes take any actions necessary to repeal the following tax credits in a manner that would otherwise not impact redemption of any tax credits issued but not yet redeemed under the programs:*

- *Brownfield Demolition Tax Credits;*
- *SBA/USDA Loan Guarantee Fee Tax Credits;*
- *Capital Tax Credits;*
- *Community Development Bank Tax Credits;*
- *Certified Capital Company Tax Credits;*
- *New Enterprise Creation Act Tax Credits;*
- *Dry Fire Hydrant Tax Credits; and*
- *Enterprise Zone Tax Credits*

#### **6. Prohibit Reducing Tax Liability to Zero Using Tax Credits**

- Should there be an AMT similar to at the federal level that prevents a Missouri taxpayer from completely eliminating their Missouri tax liability through the use of tax credits? For example, in the 2009 tax years, there were 1,597 individual income tax payers that claimed tax credits equal to their tax liability.
- Are there any other considerations with respect to a imposing an alternative minimum tax in Missouri?

***Recommendation #7:** The committee recommends that no AMT limit be applied to the state credits.*

#### **7. Monetization or “Buy-Back” of Tax Credits—“Dutch Auction”**

- Should the state purchase back outstanding credits at less than their face value to achieve a short or long term budget savings?
- Are there any other considerations with respect to the state monetizing existing tax credit obligations?

***Recommendation #8:** The committee recommends that the Commissioners consider the memorandum provided by Co-Chairman Stogel on this issue and that the full Commission set aside a specific time period to the debate this topic during its upcoming meetings. The memorandum is attached.*

#### **8. Elimination/Modification of Carryforward or Carryback Features**

- Should certain features of tax credits be eliminated or modified, such as the carryforward or carryback features?
- Are there any other considerations with respect to any features of existing tax credit programs?

***Recommendation #9:** The committee recommends that the carryback feature should be eliminated for all tax credits except the Low Income Housing Tax Credit and the Historic Preservation Tax Credit.*

***Recommendation #10:** The committee recommends that the full Commission set aside a specific time period during its upcoming meetings to discuss any recommendations with*

*respect to the carryback or carryforward features of for the Historic Preservation Tax Credit and the Low Income Housing Tax Credit.*

**9. Availability of Refundable Credits**

- Due to their unique impact on the state budget, should the availability of refundable tax credits be restricted, broadened or otherwise modified?
- Are there any other considerations with respect to refundable credits?

***Recommendation #11:*** *The committee recommends that the Senior Citizens Property Tax Credit, Missouri Quality Jobs, BUILD, Enhanced Enterprise Zone, Business Facility, and Brownfield Jobs and Investment remain refundable, while any remaining tax credits that are currently refundable be made non-refundable.*

**10. Limits of Cost per Unit or Costs per Beneficiary**

- The committee received information about projects funded with state tax credits that received what was considered an excessive amount of subsidy when evaluated on a per square foot, per unit or per beneficiary basis. The committee discussed whether an upper limit should be established with respect to the amount per square foot, per unit or per beneficiary the State should spend on any particular project.

***Recommendation #12:*** *The committee recommends that DED and MHDC monitor all projects for cost reasonableness and promulgate rules to create standards and guidelines for cost reasonableness.*

## **PUBLIC AND PRIVATE BENEFITS**

### **1. Entitlement vs. Discretionary**

- Should all or some tax credit programs be discretionary to ensure only projects with the greatest return on investment are approved?
- Should all or some tax credit programs be entitlements to provide the greatest certainty to the users of tax credits?
- Are there other considerations in determining whether some or all tax credit programs should be entitlements or discretionary?

*The committee recognizes the work of the other committees in reviewing the features of each specific tax credit program to determine whether a discretionary or entitlement program is appropriate.*

### **2. Reducing or Capping Credit Amounts**

- Should the amount of all or some tax credits be reduced from existing levels (100%, 70%, 50%, 25%) be reduced to a lower number (e.g. no tax credits greater than 20%)?
- Are there any other considerations with respect to reducing or capping tax credit amounts?

*The committee recognizes the work of the other committees in addressing the features of each specific tax credit program, including whether a lower tax credit amount is appropriate.*

### **3. Minimum Return on Investment**

- Should programs require a minimum return on investment to the State and/or local jurisdictions as a result of state expenditures?
- What should the minimum return on investment be? A dollar of general revenue in exchange for a dollar of general revenue?
- Are there any other considerations with respect to measuring and/or mandating return on investment for some or all programs?

**Recommendation #13:** *The committee recommends that recognition be given to the distinct categories of tax credit programs in determining whether it is appropriate to require that all tax credit programs provide a positive return on investment to the state, which is defined as more than one dollar being returned to the state within a defined period for every dollar of State tax revenue provided by the state in the form of the tax credit. The committee recommends that the full Commission set aside a time period during its upcoming meetings to discuss whether there are categories of tax credits for which a requirement that there be a minimum return on investment to the State is appropriate.*

#### 4. **Prohibitions on Stacking**

- Should the use of multiple tax credits for a single project be prohibited? Should there be an amount of credits that may be stacked before additional credits are prohibited?
- Are there any other considerations with respect to stacking?

***Recommendation #14:*** *The committee recommends that administering agencies develop and implement through the rulemaking process controls that will prevent the stacking of tax credits when stacking results in a negative return on investment to the state.*

## ACCOUNTABILITY

### 1. Increased Oversight and Accountability to Taxpayers

- Should there be increased oversight, accountability, or reporting requirements that would improve taxpayer confidence in tax credit programs and ensure that taxpayer dollars are being used in the most efficient, effective and transparent manner possible?
- Are there any other considerations with respect to ensuing accountability to taxpayers in the use and administration of tax credit programs?

*The committee acknowledges the work of the other committees in making specific recommendations regarding increased oversight and accountability with respect to their assigned programs, and therefore makes no specific recommendation with respect to any additional oversight and accountability measures in light of the adequate measures that are currently in place.*

### 2. Imposition of Claw-backs for Non-Performance

- Should there be strict statutory claw-backs that may be enforced in cases of non-compliance with program requirements?
- In addition or in lieu of a statutory claw-back, should a participation agreement be required for all programs that can be enforced by the administering agency in the event of non-compliance?
- Are there any other considerations with respect to claw-backs or other enforcement mechanisms for non-compliance?

***Recommendation #15:*** *The committee recommends that strict statutory clawbacks that can be enforced by the State in cases of non-compliance with program requirements be included in all tax credit programs currently lacking such provisions.*

***Recommendation #16:*** *The committee recommends that the applicants for state incentives be required to enter into a contract with the agency administering the tax credit specifying standards of performance, program requirements, and penalties in the event of non-compliance.*



## **ADMINISTRATIVE EFFICIENCIES**

### **1. Geographic or Other Distribution Requirements**

- Should a certain amount of credits be set aside for certain geographic, socioeconomic, or other groups?
- Are there any other considerations with respect to imposing distribution requirements on some or all programs?

*The committee acknowledges the work of the other committees in evaluating whether geographic or other distribution requirements are appropriate with respect to specific tax credit programs.*

### **2. Reassignment of Tax Credits to Different Administrating Agencies**

- Are there tax credit programs that could be more efficiently administered if assigned to other agencies?
- Are there any other considerations with respect to the appropriate administering agency or agencies for tax credit programs?

*The committee acknowledges the work of the other committees in evaluating the efficiency of the agencies administering the specific tax credit programs assigned to each committee.*

### **3. Administrative Efficiency**

- Are there ways to increase the administrative efficiency of some or all tax credit programs?
- Are there any other considerations with respect to increasing the administrative efficiency of some or all tax credit programs?

*The committee acknowledges the work of the other committees in evaluating the administrative efficiency of the specific tax credit programs assigned to each committee.*

## ATTACHMENTS

- *Memorandum, Missouri State Tax Credit Review Commission: Proposed Tax Credit Acquisition Program, November 11, 2010, Bryan Cave LLP*
- *List of Refundable Credits*
- *Chart with Tax Credit Caps, Sunset Dates*



Memo-EstablishmentofTaxCreditRepurchaseProgram\_v6.pdf



Refundable Tax Credits.pdf



Tax Credit Caps.xls